

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF : Guyton, et al.
FOR : **SELF-CONTAINED AIR LIFTED
SEAT APPARATUS**
SERIAL NO. : 10/799,117
FILED : March 12, 2004
LAST OFFICE ACTION : May 14, 2007
EXAMINER : Joseph F. Edell
GROUP ART UNIT : 3636
ATTORNEY DOCKET NO. : 30011.24987

Customer #78340

CERTIFICATE OF MAILING

I hereby certify that this **PETITION TO WITHDRAW THE HOLDING OF
ABANDONMENT** is deposited via EFS-Web electronic filing to: Commissioner for
Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Date: May 14 2008

By: Lebra L Klapp

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Dear Sir:

This petition to withdraw the holding of abandonment based on evidence that a reply was timely filed or mailed under 37 CFR 1.8(a) is being filed in reply to the March 21, 2008 "Notice of Abandonment." This Petition to the Director is being filed under 37 CFR 1.181. The previous correspondence was a Notice of Appeal, timely mailed on August 14, 2007 under the requirements of 37 CFR 1.8(a). Applicant now wishes to provide the information required under 37 CFR 1.8(b) for the Director to consider the previous correspondence timely filed under 37 CFR 1.8(a).

37 CFR § 1.8, titled *Certificate of mailing or transmission*, in paragraph (a), states "Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed." § 1.8(a) then lists the requirements:

- (1) Correspondence will be considered as being timely filed if:
 - (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
 - (A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;
 - (ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

37 CFR § 1.8, titled *Certificate of mailing or transmission*, in paragraph (b), states "In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S.

Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed or decided with prejudice, or the prosecution of a reexamination proceeding is terminated pursuant to § 1.550(d) or § 1.957(b) or limited pursuant to § 1.957(c), or a requester paper is refused consideration pursuant to § 1.957(a), the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing, transmission or submission.” Applicant now wishes to provide the required information under 37 CFR 1.8(b) for the previous correspondence to be considered timely filed under 37 CFR 1.8(a).

(1) Informs the Office of the Previous Mailing:

The Office notified the Applicant on March 21, 2008 that the subject application was considered abandoned because of the Applicant’s failure to timely file a proper reply to the Office Action mailed on May 14, 2007. The Office received a reply from the Applicant on August 16, 2007. This reply was mailed on August 14, 2007 according to the requirements of 37 CFR 1.8(a): the correspondence was mailed prior to expiration of the set period of time, the correspondence was addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail, and the correspondence included a certificate stating the date of deposit. The person who signed the certificate had reasonable basis to expect that the correspondence would be mailed on the date indicated.

(2) Additional Copy of Previously Mailed Correspondence and Certificate:

An additional copy of the previously mailed correspondence and certificate is attached as **Exhibit A**.

(3) Statement on Personal Knowledge Basis:

A statement by the person having personal knowledge of the facts to the timely mailing by the Applicant is titled **Declaration of Certificate of Mailing**, and attached as **Exhibit B**.

Fee set forth in § 1.17(f)

The Commissioner is hereby authorized to charge payment in the amount of \$400 for this petition set forth under 37 CFR 1.17(f). The Commissioner is hereby authorized to charge any additional fees due or to credit any overpayment to Deposit Account No. 504538.

Applicant believes that the 37 CFR § 1.8(b) requirements are now satisfied by the above information. As a result, Applicant requests acceptance of this petition to consider the previous correspondence timely filed under 37 CFR 1.8(b).

Respectfully submitted,

EMERSON, THOMSON & BENNETT

May 12, 2008
Date


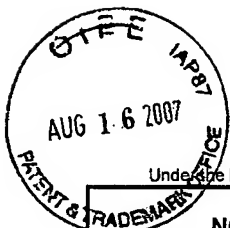

Daniel A. Thomson
Reg. No. 43,189
Customer No. 78340

Exhibit A



AF/
JF

PTO/SB/31 (04-07)
Approved for use through 09/30/2007. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**NOTICE OF APPEAL FROM THE EXAMINER TO
THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Docket Number (Optional)

30011.24987

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] August 14, 2007 on _____

Signature _____

Typed or printed name _____

M. Hujar

In re Application of

Guyton et al.

Application Number

10/799,117

Filed

03/12/2004

For Self-Contained Air Lifted Seat App

Art Unit

3636

Examiner

Edell, Joseph F.

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice of Appeal is (37 CFR 41.20(b)(1))

\$ 500.00

☐ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is:

\$ _____

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 50-1210. I have enclosed a duplicate copy of this sheet.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☐ attorney or agent of record.
Registration number _____

☒ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. 52,194

Daniel J. Schlue
Signature

Daniel J. Schlue
Typed or printed name

330-434-5239
Telephone number

August 14, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ *Total of 1 forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

06/17/2007 REF:ADU1 00000003 504246 40799117

500.00 DA

01 FC:1401

Exhibit B

Declaration of Certificate of Mailing

SELF-CONTAINED AIR LIFTED SEAT APPARATUS Application No.: 10/799,117

1. I, Michelle E. Hujar, am the legal secretary who mailed the Notice of Appeal on August 14, 2007.
2. I addressed the correspondence as set out in 37 CFR 1.1(a) and deposited the correspondence with the U.S. Postal Service with sufficient postage as first class mail on August 14, 2007.
3. I signed a certificate included with the correspondence stating the date of deposit with the U.S. Postal Service was August 14, 2007.
4. It is my normal practice to file correspondence with the U.S. Postal Service on the date stated.

I further declare that the statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 in the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing therefrom.

Executed on: May 14, 2008
Date

Signature Michelle E. Unger

Michelle E. Hujar
Name

Legal Secretary
Title